

**DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

1:16-cv-406-RJC
(1:09-cr-57-RJC-1)

BRYAN KEITH NOEL,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on the following pro se motions filed by Petitioner Bryan Keith Noel, following this Court’s dismissal of his 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence as untimely: (1) “Motion to Take Judicial Notice,” (Doc. No. 31); and (2) “Motion for Reconsideration re: Order on Combined Motion and Brief for Relief from a Judgment or Order Pursuant to the Federal Rules of Civil Procedure 60(b) and Motion for an Evidentiary Hearing,” (Doc. No. 34).

The Court will grant Petitioner’s Motion to Take Judicial Notice, (Doc. No. 31), to the extent that the Court takes judicial notice that the Fourth Circuit Court of Appeals dismissed Petitioner’s appeal of this Court’s denial of his motion to vacate on May 30, 2018. The Court will deny Petitioner’s Motion for Reconsideration, as the Court correctly found that Petitioner’s Section 2255 motion to vacate is untimely. The Court further notes that, as to Petitioner’s argument in his motion for reconsideration that his actual innocence claim was based on Schlup v. Delo, 513 U.S. 298 (1995), rather than on the actual innocence doctrine announced in McQuiggin v. Perkins, 133 S. Ct. 1924 (2013), Petitioner’s timeliness argument, based on either

Schlup or McQuiggin, is wholly without merit. Indeed, as noted, on May 30, 2018, the Fourth Circuit Court of Appeals dismissed Petitioner's appeal of this Court's dismissal of Petitioner's motion to vacate as untimely. See (Doc. No. 30).

IT IS HEREBY ORDERED that:

- (1) Petitioner's Motion to Take Judicial Notice, (Doc. No. 31), is **GRANTED**.
- (2) Petitioner's Motion for Reconsideration re: Order on Combined Motion and Brief for Relief from a Judgment or Order Pursuant to the Federal Rules of Civil Procedure 60(b) and Motion for an Evidentiary Hearing, (Doc. No. 34), is **DENIED**.

Signed: August 7, 2018

A handwritten signature in dark ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

